

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
Code of Criminal Procedure
Chapter 20A
9/10/18

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19	CHAPTER 20A. GRAND JURY PROCEEDINGS		
20	SUBCHAPTER A. GENERAL PROVISIONS		
21	<u>Revised Law</u>		
22	Art. 20A.001.	DEFINITIONS. In this chapter:	
23	(1)	"Attorney representing the state" means the	
24		attorney general, district attorney, criminal district attorney,	
25		or county attorney.	
26	(2)	"Foreperson" means the foreperson of the grand	
27		jury appointed under Article 19A.203. (Code Crim. Proc., Art.	
28		20.03 (part); New.)	
29	<u>Source Law</u>		
30	Art. 20.03.	ATTORNEY REPRESENTING STATE	
31		ENTITLED TO APPEAR. "The attorney representing the	
32		State" means the Attorney General, district attorney,	
33		criminal district attorney, or county attorney. . . .	
34	<u>Revisor's Note</u>		
35	(1)	Article 20.03, Code of Criminal Procedure,	

1 defines "attorney representing the State" to mean the
2 attorney general, district attorney, criminal
3 district attorney, or county attorney. Article 20.03
4 was first added to Chapter 20, Code of Criminal
5 Procedure, by Chapter 722 (S.B. 107), Acts of the 59th
6 Legislature, Regular Session, 1965. At that time, the
7 definition of "attorney representing the State"
8 provided by Article 20.03 was the first reference in
9 Chapter 20 to the attorney representing the state. It
10 is clear from the context that the definition was
11 intended to apply chapter-wide, and the revised law is
12 drafted accordingly.

13 (2) The definition of "foreperson" is added to
14 the revised law for clarity and the convenience of the
15 reader.

16 SUBCHAPTER B. DUTIES OF GRAND JURY AND GRAND JURORS

17 Revised Law

18 Art. 20A.051. DUTIES OF GRAND JURY. The grand jury shall
19 inquire into all offenses subject to indictment of which any grand
20 juror may have knowledge or of which the grand jury is informed by
21 the attorney representing the state or by any other credible
22 person. (Code Crim. Proc., Art. 20.09.)

23 Source Law

24 Art. 20.09. DUTIES OF GRAND JURY. The grand
25 jury shall inquire into all offenses liable to
26 indictment of which any member may have knowledge, or
27 of which they shall be informed by the attorney
28 representing the State, or any other credible person.

29 Revised Law

30 Art. 20A.052. DUTIES AND POWERS OF FOREPERSON. (a) The
31 foreperson shall:

32 (1) preside over the grand jury's sessions; and
33 (2) conduct the grand jury's business and proceedings
34 in an orderly manner.

35 (b) The foreperson may appoint one or more of the grand
36 jurors to act as clerks for the grand jury. (Code Crim. Proc., Art.

1 20.07.)

2 Source Law

3 Art. 20.07. FOREMAN SHALL PRESIDE. The foreman
4 shall preside over the sessions of the grand jury, and
5 conduct its business and proceedings in an orderly
6 manner. He may appoint one or more members of the body
7 to act as clerks for the grand jury.

8 Revised Law

9 Art. 20A.053. MEETING AND ADJOURNMENT. The grand jury
10 shall meet and adjourn at times agreed on by a majority of the grand
11 jury, except that the grand jury may not adjourn for more than three
12 consecutive days unless the court consents to the adjournment.
13 With the court's consent, the grand jury may adjourn for a longer
14 period and shall conform the grand jury's adjournments as closely
15 as possible to the court's adjournments. (Code Crim. Proc., Art.
16 20.08.)

17 Source Law

18 Art. 20.08. ADJOURNMENTS. The grand jury shall
19 meet and adjourn at times agreed upon by a majority of
20 the body; but they shall not adjourn, at any one time,
21 for more than three days, unless by consent of the
22 court. With the consent of the court, they may adjourn
23 for a longer time, and shall as near as may be, conform
24 their adjournments to those of the court.

25 Revisor's Note

26 Article 20.08, Code of Criminal Procedure,
27 provides that the grand jury may not adjourn "at any
28 one time" for more than three days. For clarity, the
29 revised law substitutes "consecutive" for "at any one
30 time" because in context the terms are synonymous and
31 "consecutive" is more commonly used.

32 SUBCHAPTER C. GRAND JURY ROOM; PERSONS AUTHORIZED TO BE PRESENT

33 Revised Law

34 Art. 20A.101. GRAND JURY ROOM. After the grand jury is
35 organized, the grand jury shall discharge the grand jury's duties
36 in a suitable place that the sheriff shall prepare for the grand
37 jury's sessions. (Code Crim. Proc., Art. 20.01.)

38 Source Law

39 Art. 20.01. GRAND JURY ROOM. After the grand

1 jury is organized they shall proceed to the discharge
2 of their duties in a suitable place which the sheriff
3 shall prepare for their sessions.

4 Revised Law

5 Art. 20A.102. PERSONS WHO MAY BE PRESENT IN GRAND JURY ROOM.

6 (a) While the grand jury is conducting proceedings, only the
7 following persons may be present in the grand jury room:

8 (1) a grand juror;

9 (2) a bailiff;

10 (3) the attorney representing the state;

11 (4) a witness:

12 (A) while the witness is being examined; or

13 (B) when the witness's presence is necessary to
14 assist the attorney representing the state in examining another
15 witness or presenting evidence to the grand jury;

16 (5) an interpreter, if necessary;

17 (6) a stenographer or a person operating an electronic
18 recording device, as provided by Article 20A.201; and

19 (7) a person operating a video teleconferencing system
20 for use under Article 20A.259.

21 (b) While the grand jury is deliberating, only a grand juror
22 may be present in the grand jury room. (Code Crim. Proc., Art.
23 20.011.)

24 Source Law

25 Art. 20.011. WHO MAY BE PRESENT IN GRAND JURY
26 ROOM. (a) Only the following persons may be present
27 in a grand jury room while the grand jury is conducting
28 proceedings:

29 (1) grand jurors;

30 (2) bailiffs;

31 (3) the attorney representing the state;

32 (4) witnesses while being examined or when
33 necessary to assist the attorney representing the
34 state in examining other witnesses or presenting
35 evidence to the grand jury;

36 (5) interpreters, if necessary;

37 (6) a stenographer or person operating an
38 electronic recording device, as provided by Article
39 20.012; and

40 (7) a person operating a video
41 teleconferencing system for use under Article 20.151.

42 (b) Only a grand juror may be in a grand jury
43 room while the grand jury is deliberating.

Revised Law

Art. 20A.103. ATTORNEY REPRESENTING STATE ENTITLED TO APPEAR. The attorney representing the state is entitled to appear before the grand jury and inform the grand jury of offenses subject to indictment at any time except when the grand jury is discussing the propriety of finding an indictment or is voting on an indictment. (Code Crim. Proc., Art. 20.03 (part).)

8 Source Law

9 Art. 20.03. . . . The attorney representing
10 the State, is entitled to go before the grand jury and
11 inform them of offenses liable to indictment at any
12 time except when they are discussing the propriety of
13 finding an indictment or voting upon the same.

4 Revised Law

5 Art. 20A.104. PERSONS WHO MAY ADDRESS GRAND JURY. No person

6 may address the grand jury about a matter before the grand jury

7 other than the attorney representing the state, a witness, or the

8 accused or suspected person or the attorney for the accused or

9 suspected person if approved by the attorney representing the

10 state. (Code Crim. Proc., Art. 20.04 (part).)

Source Law

Art. 20.04. . . . No person may address the grand jury about a matter before the grand jury other than the attorney representing the State, a witness, or the accused or suspected person or the attorney for the accused or suspected person if approved by the State's attorney.

Revisor's Note

Article 20.04, Code of Criminal Procedure, refers to the "State's attorney." Throughout this chapter, the revised law substitutes "attorney representing the state" for "State's attorney" and other similar references for clarity and consistency in the terminology used within the chapter and because "attorney representing the state" is the defined term under Article 20.03, Code of Criminal Procedure, revised in relevant part in this chapter as Article 20A.001(1).

1 SUBCHAPTER D. ADVICE TO GRAND JURY

2 Revised Law

3 Art. 20A.151. ADVICE FROM ATTORNEY REPRESENTING STATE. The
4 grand jury may send for the attorney representing the state and ask
5 the attorney's advice on any matter of law or on any question
6 regarding the discharge of the grand jury's duties. (Code Crim.
7 Proc., Art. 20.05.)

8 Source Law

9 Art. 20.05. MAY SEND FOR ATTORNEY. The grand
10 jury may send for the attorney representing the state
11 and ask his advice upon any matter of law or upon any
12 question arising respecting the proper discharge of
13 their duties.

14 Revisor's Note

15 Article 20.05, Code of Criminal Procedure, refers
16 to questions "arising respecting" the "proper"
17 discharge of the grand jury's duties. The revised law
18 substitutes "regarding" for "arising respecting"
19 because in context the language is synonymous and
20 "regarding" is more commonly used. The revised law
21 also omits "proper" as unnecessary because the quoted
22 language does not add to the clear meaning of the law.

23 Revised Law

24 Art. 20A.152. ADVICE FROM COURT. (a) The grand jury may
25 seek and receive advice from the court regarding any matter before
26 the grand jury. For that purpose, the grand jury shall go into
27 court in a body.

28 (b) The grand jury shall ensure that the manner in which the
29 grand jury's questions are asked does not divulge the particular
30 accusation pending before the grand jury.

31 (c) The grand jury may submit questions to the court in
32 writing. The court may respond to those questions in writing. (Code
33 Crim. Proc., Art. 20.06.)

34 Source Law

35 Art. 20.06. ADVICE FROM COURT. The grand jury
36 may also seek and receive advice from the court
37 touching any matter before them, and for this purpose,

1 shall go into court in a body; but they shall so guard
2 the manner of propounding their questions as not to
3 divulge the particular accusation that is pending
4 before them; or they may propound their questions in
5 writing, upon which the court may give them the desired
6 information in writing.

7 SUBCHAPTER E. RECORDING AND DISCLOSURE OF GRAND JURY PROCEEDINGS

8 Revised Law

9 Art. 20A.201. RECORDING OF ACCUSED OR SUSPECTED PERSON'S
10 TESTIMONY; RETENTION OF RECORDS. (a) The examination of an accused
11 or suspected person before the grand jury and that person's
12 testimony shall be recorded by a stenographer or by use of an
13 electronic device capable of recording sound.

14 (b) The validity of a grand jury proceeding is not affected
15 by an unintentional failure to record all or part of the examination
16 or testimony under Subsection (a).

17 (c) The attorney representing the state shall maintain
18 possession of all records other than stenographer's notes made
19 under Subsection (a) and any typewritten transcription of those
20 records, except as otherwise provided by this subchapter. (Code
21 Crim. Proc., Art. 20.012.)

22 Source Law

23 Art. 20.012. RECORDING OF CERTAIN TESTIMONY.
24 (a) Questions propounded by the grand jury or the
25 attorney representing the state to a person accused or
26 suspected and the testimony of that person to the grand
27 jury shall be recorded either by a stenographer or by
28 use of an electronic device capable of recording
29 sound.

30 (b) The validity of a grand jury proceeding is
31 not affected by an unintentional failure to record all
32 or part of questions propounded or testimony made
33 under Subsection (a).

34 (c) The attorney representing the state shall
35 maintain possession of all records other than
36 stenographer's notes made under this article and any
37 typewritten transcription of those records, except as
38 provided by Article 20.02.

39 Revisor's Note

40 (1) Article 20.012(a), Code of Criminal
41 Procedure, refers to "[q]uestions" propounded by the
42 grand jury or the attorney representing the state to an
43 accused or suspected person. The revised law
44 substitutes "examination" for "questions" for clarity

1 and consistency in the terminology used within the
2 chapter.

3 (2) Article 20.012(a), Code of Criminal
4 Procedure, requires questions "propounded by the grand
5 jury or the attorney representing the state" to an
6 accused or suspected person to be recorded. The
7 revised law omits the quoted language as unnecessary
8 because only the grand jury and the attorney
9 representing the state may question a witness under
10 Article 20.04, Code of Criminal Procedure, revised in
11 relevant part in this chapter as Article 20A.257(a).

12 (3) Article 20.012(c), Code of Criminal
13 Procedure, provides that the attorney representing the
14 state shall maintain possession of certain records
15 "except as provided by Article 20.02," meaning Article
16 20.02, Code of Criminal Procedure. The provisions of
17 Article 20.02 that provide exceptions to the
18 requirement that the attorney representing the state
19 maintain possession of those records are revised in
20 this subchapter. The revised law is drafted
21 accordingly.

22 Revised Law

23 Art. 20A.202. PROCEEDINGS SECRET. (a) Grand jury
24 proceedings are secret.

25 (b) A subpoena or summons relating to a grand jury
26 proceeding or investigation must be kept secret to the extent and
27 for as long as necessary to prevent the unauthorized disclosure of a
28 matter before the grand jury. This subsection may not be construed
29 to limit a disclosure permitted by Article 20A.204(b), (c), or (d)
30 or 20A.205(a) or (b). (Code Crim. Proc., Arts. 20.02(a), (h).)

31 Source Law

32 Art. 20.02. PROCEEDINGS SECRET. (a) The
33 proceedings of the grand jury shall be secret.

34 (h) A subpoena or summons relating to a grand
35 jury proceeding or investigation must be kept secret

1 to the extent and for as long as necessary to prevent
2 the unauthorized disclosure of a matter before the
3 grand jury. This subsection may not be construed to
4 limit a disclosure permitted by Subsection (c), (d),
5 or (e).

6 Revised Law

7 Art. 20A.203. DISCLOSURE BY PERSON IN PROCEEDING
8 PROHIBITED. (a) A grand juror, bailiff, interpreter, stenographer
9 or person operating an electronic recording device, person
10 preparing a typewritten transcription of a stenographic or
11 electronic recording, or person operating a video teleconferencing
12 system for use under Article 20A.259 who discloses anything
13 transpiring before the grand jury in the course of the grand jury's
14 official duties, regardless of whether the thing transpiring is
15 recorded, may be punished by a fine not to exceed \$500, as for
16 contempt of court, by a term of confinement not to exceed 30 days,
17 or both.

18 (b) A witness who reveals any matter about which the witness
19 is examined or that the witness observes during a grand jury
20 proceeding, other than when the witness is required to give
21 evidence on that matter in due course, may be punished by a fine not
22 to exceed \$500, as for contempt of court, and by a term of
23 confinement not to exceed six months. (Code Crim. Proc., Arts.
24 20.02(b), 20.16(b).)

25 Source Law

26 [Art. 20.02]

27 (b) A grand juror, bailiff, interpreter,
28 stenographer or person operating an electronic
29 recording device, person preparing a typewritten
30 transcription of a stenographic or electronic
31 recording, or person operating a video
32 teleconferencing system for use under Article 20.151
33 who discloses anything transpiring before the grand
34 jury, regardless of whether the thing transpiring is
35 recorded, in the course of the official duties of the
36 grand jury, is liable to a fine as for contempt of the
37 court, not exceeding \$500, imprisonment not exceeding
38 30 days, or both the fine and imprisonment.

39 [Art. 20.16]

40 (b) A witness who reveals any matter about which
41 the witness is interrogated or that the witness has
42 observed during the proceedings of the grand jury,
43 other than when required to give evidence thereof in
44 due course, shall be liable to a fine as for contempt
45 of court, not exceeding \$500, and to imprisonment not
46 exceeding six months.

1 Revisor's Note

2 (1) Article 20.02(b), Code of Criminal
3 Procedure, provides that a person "is liable to"
4 punishment under certain circumstances. The revised
5 law substitutes "may be punished by" for "is liable to"
6 because in context the phrases are synonymous and "may
7 be punished by" is more consistent with modern usage.

8 (2) Articles 20.02(b) and 20.16(b), Code of
9 Criminal Procedure, refer to "imprisonment." The
10 revised law substitutes "confinement" for
11 "imprisonment" to conform to the penalty structure and
12 terminology of the Penal Code.

13 (3) Article 20.16(b), Code of Criminal
14 Procedure, refers to a witness being "interrogated."
15 Throughout this chapter, the revised law substitutes
16 "examined" for "interrogated" for the reason stated in
17 Revisor's Note (1) to Article 20A.201.

18 (4) Article 20.16(b), Code of Criminal
19 Procedure, states that a witness who reveals certain
20 information relating to a grand jury proceeding "shall
21 be liable to" certain punishment. The revised law
22 substitutes "may be punished by" for "shall be liable
23 to" because in context the phrases are synonymous and
24 "may be punished by" is more consistent with modern
25 usage.

26 Revised Law

27 Art. 20A.204. DISCLOSURE BY ATTORNEY REPRESENTING STATE.

28 (a) The attorney representing the state may not disclose anything
29 transpiring before the grand jury except as permitted by this
30 article or Article 20A.205(a) or (b).

31 (b) In performing the attorney's duties, the attorney
32 representing the state may disclose or permit a disclosure of a
33 record made under Article 20A.201 or a typewritten transcription of
34 that record, or may make or permit a disclosure otherwise

1 prohibited by Article 20A.203, to a grand juror serving on the grand
2 jury before which the record was made, another grand jury, a law
3 enforcement agency, or a prosecuting attorney, as the attorney
4 representing the state determines is necessary to assist the
5 attorney in the performance of the attorney's duties.

6 (c) The attorney representing the state shall warn any
7 person authorized to receive information under Subsection (b) of
8 the person's duty to maintain the secrecy of the information.

9 (d) A person who receives information under Subsection (b)
10 and discloses that information for purposes other than those
11 permitted by that subsection may be punished for contempt in the
12 same manner as a person who violates Article 20A.203(a). (Code
13 Crim. Proc., Arts. 20.02(c), (g).)

14 Source Law

15 (c) A disclosure of a record made under Article
16 20.012, a disclosure of a typewritten transcription of
17 that record, or a disclosure otherwise prohibited by
18 Subsection (b) or Article 20.16 may be made by the
19 attorney representing the state in performing the
20 attorney's duties to a grand juror serving on the grand
21 jury before whom the record was made, another grand
22 jury, a law enforcement agency, or a prosecuting
23 attorney, as permitted by the attorney representing
24 the state and determined by the attorney as necessary
25 to assist the attorney in the performance of the
26 attorney's duties. The attorney representing the
27 state shall warn any person the attorney authorizes to
28 receive information under this subsection of the
29 person's duty to maintain the secrecy of the
30 information. Any person who receives information
31 under this subsection and discloses the information
32 for purposes other than those permitted by this
33 subsection is subject to punishment for contempt in
34 the same manner as persons who violate Subsection (b).

35 (g) The attorney representing the state may not
36 disclose anything transpiring before the grand jury
37 except as permitted by Subsections (c), (d), and (e).

38 Revisor's Note

39 Article 20.02(c), Code of Criminal Procedure,
40 provides that the attorney representing the state may
41 make a disclosure otherwise prohibited under
42 "Subsection (b) or Article 20.16" under certain
43 circumstances. The provisions of Articles 20.02(b)
44 and 20.16 prohibiting disclosure are revised in

relevant part in this chapter as Article 20A.203, and
the revised law is drafted accordingly.

Revised Law

Art. 20A.205. PETITION FOR DISCLOSURE BY DEFENDANT. (a)
The defendant may petition a court to order the disclosure of
information made secret by Article 20A.202, 20A.203(a), or 20A.204,
including a recording or typewritten transcription under Article
20A.201, as a matter preliminary to or in connection with a judicial
proceeding. The court may order disclosure of the information if
the defendant shows a particularized need.

(b) A petition for disclosure under Subsection (a) must be
filed in the district court in which the case is pending. The
defendant must also file a copy of the petition with the attorney
representing the state, the parties to the judicial proceeding, and
any other person the court requires. Each person who receives a
copy of the petition under this subsection is entitled to appear
before the court. The court shall provide interested parties with
an opportunity to appear and present arguments for or against the
requested disclosure.

(c) A person who receives information under this article and
discloses that information may be punished for contempt in the same
manner as a person who violates Article 20A.203(a). (Code
Crim. Proc., Arts. 20.02(d), (e), (f).)

Source Law

(d) The defendant may petition a court to order
the disclosure of information otherwise made secret by
this article or the disclosure of a recording or
typewritten transcription under Article 20.012 as a
matter preliminary to or in connection with a judicial
proceeding. The court may order disclosure of the
information, recording, or transcription on a showing
by the defendant of a particularized need.

(e) A petition for disclosure under Subsection
(d) must be filed in the district court in which the
case is pending. The defendant must also file a copy
of the petition with the attorney representing the
state, the parties to the judicial proceeding, and any
other persons required by the court to receive a copy
of the petition. All persons receiving a petition
under this subsection are entitled to appear before
the court. The court shall provide interested parties
with an opportunity to appear and present arguments
for the continuation of or end to the requirement of

secrecy.

(f) A person who receives information under Subsection (d) or (e) and discloses that information is subject to punishment for contempt in the same manner as a person who violates Subsection (b).

Revisor's Note

Article 20.02(d), Code of Criminal Procedure, provides that a defendant may petition a court to order the disclosure of information otherwise made secret by "this article." The provisions of Article 20.02 that make information secret are revised in relevant part in this chapter as Articles 20A.202, 20A.203(a), and 20A.204, and the revised law is drafted accordingly.

SUBCHAPTER F. WITNESSES

Revised Law

Art. 20A.251. IN-COUNTY WITNESS. (a) In term time or vacation, the foreperson or the attorney representing the state may issue a summons or attachment for any witness in the county in which the grand jury sits.

(b) A summons or attachment issued under Subsection (a) may require the witness to appear before the grand jury at a specified time, or immediately, without stating the matter under investigation. (Code Crim. Proc., Art. 20.10.)

Source Law

Art. 20.10. ATTORNEY OR FOREMAN MAY ISSUE PROCESS. The attorney representing the state, or the foreman, in term time or vacation, may issue a summons or attachment for any witness in the county where they are sitting; which summons or attachment may require the witness to appear before them at a time fixed, or forthwith, without stating the matter under investigation.

Revisor's Note

(1) Article 20.10, Code of Criminal Procedure, provides that the attorney representing the state or the foreperson may issue a summons or attachment for any witness in the county where "they" are sitting. The article further provides that the summons or attachment may require the witness to appear before "them." The revised law substitutes "the grand jury"

1 for "they" and "them" because it is clear from the
2 context that those pronouns refer to the grand jury.

3 (2) Article 20.10, Code of Criminal Procedure,
4 provides that a summons or attachment may require a
5 witness to appear before the grand jury "forthwith."
6 Throughout this chapter, the revised law substitutes
7 "immediately" for "forthwith" because in context the
8 terms are synonymous and "immediately" is more
9 consistent with modern usage.

10 Revised Law

11 Art. 20A.252. OUT-OF-COUNTY WITNESS. (a) The foreperson
12 or the attorney representing the state may cause a subpoena or
13 attachment for a witness to be issued to any county in the state by
14 submitting a written application to the district court stating the
15 name and residence of the witness and that the witness's testimony
16 is believed to be material.

17 (b) A subpoena or attachment issued under this article:

18 (1) is returnable to the grand jury in session or to
19 the next grand jury for the county in which the subpoena or
20 attachment was issued, as determined by the applicant; and

21 (2) shall be served and returned in the manner
22 prescribed by Chapter 24.

23 (c) A subpoena issued under this article may require the
24 witness to appear and produce records and documents.

25 (d) A witness subpoenaed under this article shall be
26 compensated as provided by this code.

27 (e) An attachment issued under this article must command the
28 sheriff or any constable of the county in which the witness resides
29 to serve the witness and to bring the witness before the grand jury
30 at a time and place specified in the attachment.

31 (f) The attorney representing the state may cause an
32 attachment to be issued under this article in term time or vacation.

33 (Code Crim. Proc., Arts. 20.11, 20.12.)

Source Law

Art. 20.11. OUT-OF-COUNTY WITNESSES.

Sec. 1. The foreman or the attorney representing the State may, upon written application to the district court stating the name and residence of the witness and that his testimony is believed to be material, cause a subpoena or an attachment to be issued to any county in the State for such witness, returnable to the grand jury then in session, or to the next grand jury for the county from whence the same issued, as such foreman or attorney may desire. The subpoena may require the witness to appear and produce records and documents. An attachment shall command the sheriff or any constable of the county where the witness resides to serve the witness, and have him before the grand jury at the time and place specified in the writ.

Sec. 2. A subpoena or attachment issued pursuant to this article shall be served and returned in the manner prescribed in Chapter 24 of this code.

A witness subpoenaed pursuant to this article shall be compensated as provided in this code.

Art. 20.12. ATTACHMENT IN VACATION. The attorney representing the state may cause an attachment for a witness to be issued, as provided in the preceding Article, either in term time or in vacation.

Revised Law

Art. 20A.253. EXECUTION OF PROCESS. (a) A bailiff or other officer who receives process to be served from the grand jury shall immediately execute the process and return the process to:

(1) the foreperson, if the grand jury is in session; or

(2) the district clerk, if the grand jury is not in session.

(b) If the process is returned unexecuted, the return must state why the process was not executed. (Code Crim. Proc., Art. 20.13.)

Source Law

Art. 20.13. EXECUTION OF PROCESS. The bailiff or other officer who receives process to be served from a grand jury shall forthwith execute the same and return it to the foreman, if the grand jury be in session; and if the grand jury be not in session, the process shall be returned to the district clerk. If the process is returned not executed, the return shall state why it was not executed.

Revised Law

Art. 20A.254. EVASION OF PROCESS. If the court determines that a witness for whom an attachment has been issued to appear before the grand jury is in any manner wilfully evading the service

1 of the summons or attachment, the court may fine the witness, as for
2 contempt, in an amount not to exceed \$500. (Code Crim. Proc.,
3 Art. 20.14.)

4 Source Law

5 Art. 20.14. EVASION OF PROCESS. If it be made
6 to appear satisfactorily to the court that a witness
7 for whom an attachment has been issued to go before the
8 grand jury is in any manner wilfully evading the
9 service of such summons or attachment, the court may
10 fine such witness, as for contempt, not exceeding five
11 hundred dollars.

12 Revised Law

13 Art. 20A.255. WITNESS REFUSAL TO TESTIFY. (a) If a witness
14 brought in any manner before a grand jury refuses to testify, the
15 witness's refusal shall be communicated to the attorney
16 representing the state or to the court.

17 (b) The court may compel a witness described by Subsection
18 (a) to answer a proper question by imposing a fine not to exceed
19 \$500 and by committing the witness to jail until the witness is
20 willing to testify. (Code Crim. Proc., Art. 20.15.)

21 Source Law

22 Art. 20.15. WHEN WITNESS REFUSES TO TESTIFY.
23 When a witness, brought in any manner before a grand
24 jury, refuses to testify, such fact shall be made known
25 to the attorney representing the State or to the court;
26 and the court may compel the witness to answer the
27 question, if it appear to be a proper one, by imposing
28 a fine not exceeding five hundred dollars, and by
29 committing the party to jail until he is willing to
30 testify.

31 Revisor's Note

32 (1) Article 20.15, Code of Criminal Procedure,
33 provides that a witness's refusal to testify shall be
34 "made known" to the attorney representing the state or
35 to the court. The revised law substitutes
36 "communicated" for "made known" because in context the
37 phrases are synonymous and "communicated" is more
38 consistent with modern usage.

39 (2) Article 20.15, Code of Criminal Procedure,
40 provides that the court may compel a witness to answer
41 a "question, if it appear to be a proper one." The

1 Texas Court of Criminal Appeals has interpreted the
2 quoted language to mean that a court may compel a
3 witness to answer a question only if the question is
4 proper. *See Ex parte Edone*, 740 S.W.2d 446 (Tex. Crim.
5 App. 1987). Accordingly, the revised law substitutes a
6 "proper question" for the quoted language for clarity.

7 (3) Article 20.15, Code of Criminal Procedure,
8 provides that the court may compel a witness to answer
9 a question by committing the "party" to jail. It is
10 clear from the context that the "party" is the witness
11 who refuses to testify. The revised law is drafted
12 accordingly.

13 Revised Law

14 Art. 20A.256. WITNESS OATH. Before each witness is
15 examined, the foreperson or a person under the foreperson's
16 direction shall administer the following oath to the witness: "You
17 solemnly swear that you will not reveal, by your words or conduct,
18 and will keep secret any matter about which you may be examined or
19 that you have observed during the proceedings of the grand jury, and
20 that you will answer truthfully the questions asked of you by the
21 grand jury, or under its direction, so help you God." (Code Crim.
22 Proc., Art. 20.16(a).)

23 Source Law

24 Art. 20.16. OATHS TO WITNESSES. (a) The
25 following oath shall be administered by the foreman,
26 or under the foreman's direction, to each witness
27 before being interrogated: "You solemnly swear that
28 you will not reveal, by your words or conduct, and will
29 keep secret any matter about which you may be
30 interrogated or that you have observed during the
31 proceedings of the grand jury, and that you will answer
32 truthfully the questions asked of you by the grand
33 jury, or under its direction, so help you God."

34 Revised Law

35 Art. 20A.257. EXAMINATION OF WITNESSES. (a) Only a grand
36 juror or the attorney representing the state may examine a witness
37 before the grand jury.

38 (b) The attorney representing the state shall advise the

1 grand jury regarding the proper mode of examining a witness.

2 (c) If a felony has been committed in any county in the grand
3 jury's jurisdiction, and the name of the offender is known or
4 unknown or if it is uncertain when or how the felony was committed,
5 the grand jury shall first state the subject matter under
6 investigation to a witness called before the grand jury and may then
7 ask questions relevant to the transaction in general terms and in a
8 manner that enables a determination as to whether the witness has
9 knowledge of the violation of any particular law by any person, and
10 if so, by what person. (Code Crim. Proc., Arts. 20.04 (part),
11 20.18.)

12 Source Law

13 Art. 20.04. ATTORNEY MAY EXAMINE WITNESSES.
14 The attorney representing the State may examine the
15 witnesses before the grand jury and shall advise as to
16 the proper mode of interrogating them. No person other
17 than the attorney representing the State or a grand
18 juror may question a witness before the grand
19 jury. . . .

20 Art. 20.18. HOW WITNESS QUESTIONED. When a
21 felony has been committed in any county within the
22 jurisdiction of the grand jury, and the name of the
23 offender is known or unknown or where it is uncertain
24 when or how the felony was committed, the grand jury
25 shall first state to the witness called the subject
26 matter under investigation, then may ask pertinent
27 questions relative to the transaction in general terms
28 and in such a manner as to determine whether he has
29 knowledge of the violation of any particular law by any
30 person, and if so, by what person.

31 Revisor's Note

32 (1) Article 20.04, Code of Criminal Procedure,
33 specifies the persons who may "question" a witness
34 before the grand jury. The revised law substitutes
35 "examine" for "question" for the reason stated in
36 Revisor's Note (1) to Article 20A.201.

37 (2) Article 20.18, Code of Criminal Procedure,
38 authorizes the grand jury to ask a witness "pertinent
39 questions relative" to the transaction under
40 investigation. The revised law substitutes "questions
41 relevant" for the quoted language because in context
42 the phrases are synonymous and "questions relevant" is

1 more concise.

2 Revised Law

3 Art. 20A.258. EXAMINATION OF ACCUSED OR SUSPECTED PERSON.

4 (a) Before the examination of an accused or suspected person who is
5 subpoenaed to appear before the grand jury, the person shall be:

6 (1) provided the warnings described by Subsection (b)
7 orally and in writing; and

8 (2) given a reasonable opportunity to:

9 (A) retain counsel or apply to the court for an
10 appointed attorney; and

11 (B) consult with counsel before appearing before
12 the grand jury.

13 (b) The warnings required under Subsection (a)(1) must
14 consist of the following:

15 "Your testimony before this grand jury is under oath. Any
16 material question that is answered falsely before this grand jury
17 subjects you to being prosecuted for aggravated perjury. You have
18 the right to refuse to make answers to any question, the answer to
19 which would incriminate you in any manner. You have the right to
20 have a lawyer present outside this chamber to advise you before
21 making answers to questions you feel might incriminate you. Any
22 testimony you give may be used against you at any subsequent
23 proceeding. If you are unable to employ a lawyer, you have the
24 right to have a lawyer appointed to advise you before making an
25 answer to a question, the answer to which you feel might incriminate
26 you."

27 (c) In examining an accused or suspected person, the grand
28 jury shall:

29 (1) first state:

30 (A) the offense of which the person is accused or
31 suspected;

32 (B) the county in which the offense is alleged to
33 have been committed; and

34 (C) as closely as possible, the time the offense

1 was committed; and

2 (2) direct the examination to the offense under
3 investigation. (Code Crim. Proc., Art. 20.17.)

4 Source Law

5 Art. 20.17. HOW SUSPECT OR ACCUSED QUESTIONED.

6 (a) The grand jury, in propounding questions to the
7 person accused or suspected, shall first state the
8 offense with which he is suspected or accused, the
9 county where the offense is said to have been committed
10 and as nearly as may be, the time of commission of the
11 offense, and shall direct the examination to the
12 offense under investigation.

13 (b) Prior to any questioning of an accused or
14 suspected person who is subpoenaed to appear before
15 the grand jury, the accused or suspected person shall
16 be furnished a written copy of the warnings contained
17 in Subsection (c) of this section and shall be given a
18 reasonable opportunity to retain counsel or apply to
19 the court for an appointed attorney and to consult with
20 counsel prior to appearing before the grand jury.

21 (c) If an accused or suspected person is
22 subpoenaed to appear before a grand jury prior to any
23 questions before the grand jury, the person accused or
24 suspected shall be orally warned as follows:

25 (1) "Your testimony before this grand jury
26 is under oath";

27 (2) "Any material question that is
28 answered falsely before this grand jury subjects you
29 to being prosecuted for aggravated perjury";

30 (3) "You have the right to refuse to make
31 answers to any question, the answer to which would
32 incriminate you in any manner";

33 (4) "You have the right to have a lawyer
34 present outside this chamber to advise you before
35 making answers to questions you feel might incriminate
36 you";

37 (5) "Any testimony you give may be used
38 against you at any subsequent proceeding";

39 (6) "If you are unable to employ a lawyer,
40 you have the right to have a lawyer appointed to advise
41 you before making an answer to a question, the answer
42 to which you feel might incriminate you."

43 Revisor's Note

44 (1) Article 20.17(a), Code of Criminal
45 Procedure, refers to the county where an offense is
46 "said" to have been committed. The revised law
47 substitutes "alleged" for "said" because in context
48 the terms are synonymous and "alleged" is more
49 commonly used.

50 (2) Article 20.17(a), Code of Criminal
51 Procedure, states certain requirements for a grand
52 jury that is "propounding questions" to an accused or

1 suspected person. Articles 20.17(b) and (c), Code of
2 Criminal Procedure, provide that certain steps must be
3 taken before any "questioning" of or "questions" to an
4 accused or suspected person subpoenaed to appear
5 before the grand jury. The revised law substitutes
6 "examining" and "examination" for the quoted language
7 for the reason stated in Revisor's Note (1) to Article
8 20A.201.

9 Revised Law

10 Art. 20A.259. PEACE OFFICER TESTIMONY BY VIDEO
11 TELECONFERENCING. (a) With the consent of the foreperson and the
12 attorney representing the state, a peace officer summoned to
13 testify before the grand jury may testify through the use of a
14 closed circuit video teleconferencing system that provides a
15 simultaneous, encrypted, compressed full motion video and
16 interactive communication of image and sound between the officer,
17 the grand jury, and the attorney representing the state.

18 (b) In addition to being administered the oath required
19 under Article 20A.256, before being examined, a peace officer
20 testifying through the use of a closed circuit video
21 teleconferencing system under this article shall affirm that the
22 officer's testimony:

23 (1) cannot be heard by any person other than a person
24 in the grand jury room; and

25 (2) is not being recorded or otherwise preserved by
26 any person at the location from which the officer is testifying.

27 (c) Testimony received from a peace officer under this
28 article shall be recorded in the same manner as other testimony
29 taken before the grand jury and shall be preserved. (Code Crim.
30 Proc., Art. 20.151.)

31 Source Law

32 Art. 20.151. CERTAIN TESTIMONY BY VIDEO
33 TELECONFERENCING. (a) With the consent of the
34 foreman of the grand jury and the attorney
35 representing the state, a peace officer summoned to
36 testify before the grand jury may testify through the

1 use of a closed circuit video teleconferencing system
2 that provides an encrypted, simultaneous, compressed
3 full motion video and interactive communication of
4 image and sound between the peace officer, the
5 attorney representing the state, and the grand jury.

6 (b) In addition to being administered the oath
7 described by Article 20.16(a), before being
8 interrogated, a peace officer testifying through the
9 use of a closed circuit video teleconferencing system
10 under this article shall affirm that:

11 (1) no person other than a person in the
12 grand jury room is capable of hearing the peace
13 officer's testimony; and

14 (2) the peace officer's testimony is not
15 being recorded or otherwise preserved by any person at
16 the location from which the peace officer is
17 testifying.

18 (c) Testimony received from a peace officer
19 under this article shall be recorded in the same manner
20 as other testimony taken before the grand jury and
21 shall be preserved.

22 SUBCHAPTER G. INDICTMENT

23 Revised Law

24 Art. 20A.301. VOTING ON INDICTMENT. After all the
25 testimony accessible to the grand jury has been given with respect
26 to any criminal accusation, the grand jury shall vote on the
27 presentment of an indictment. If at least nine grand jurors concur
28 in finding the bill, the foreperson shall make a memorandum of the
29 vote with any information enabling the attorney representing the
30 state to prepare the indictment. (Code Crim. Proc., Art. 20.19.)

31 Source Law

32 Art. 20.19. GRAND JURY SHALL VOTE. After all
33 the testimony which is accessible to the grand jury
34 shall have been given in respect to any criminal
35 accusation, the vote shall be taken as to the
36 presentment of an indictment, and if nine members
37 concur in finding the bill, the foreman shall make a
38 memorandum of the same with such data as will enable
39 the attorney who represents the State to write the
40 indictment.

41 Revisor's Note

42 (1) Article 20.19, Code of Criminal Procedure,
43 requires "nine" grand jurors to concur in finding the
44 bill. It is clear from the context that the indictment
45 is valid if nine or more grand jurors concur in finding
46 the bill, and the revised law is drafted accordingly.

47 (2) Article 20.19, Code of Criminal Procedure,
48 provides that a vote shall be taken on the presentment

1 of an indictment and requires the foreperson to make a
2 memorandum of "the same." It is clear from the context
3 that "the same" refers to the vote taken on the
4 presentment of the indictment, and the revised law is
5 drafted accordingly.

6 Revised Law

7 Art. 20A.302. PREPARATION OF INDICTMENT. (a) The attorney
8 representing the state shall prepare, with as little delay as
9 possible, each indictment found by the grand jury and shall deliver
10 the indictment to the foreperson. The attorney shall endorse on the
11 indictment the name of each witness on whose testimony the
12 indictment was found.

13 (b) The foreperson shall officially sign each indictment
14 prepared and delivered under Subsection (a). (Code Crim. Proc.,
15 Art. 20.20.)

16 Source Law

17 Art. 20.20. INDICTMENT PREPARED. The attorney
18 representing the State shall prepare all indictments
19 which have been found, with as little delay as
20 possible, and deliver them to the foreman, who shall
21 sign the same officially, and said attorney shall
22 endorse thereon the names of the witnesses upon whose
23 testimony the same was found.

24 Revised Law

25 Art. 20A.303. PRESENTMENT OF INDICTMENT. When an
26 indictment is ready to be presented, the grand jury shall, through
27 the foreperson, deliver the indictment to the judge or court clerk.
28 At least nine grand jurors must be present to deliver the
29 indictment. (Code Crim. Proc., Art. 20.21.)

30 Source Law

31 Art. 20.21. INDICTMENT PRESENTED. When the
32 indictment is ready to be presented, the grand jury
33 shall through their foreman, deliver the indictment to
34 the judge or clerk of the court. At least nine members
35 of the grand jury must be present on such occasion.

36 Revised Law

37 Art. 20A.304. PRESENTMENT OF INDICTMENT ENTERED IN RECORD.
38 (a) If the defendant is in custody or under bond at the time the
39 indictment is presented, the fact of the presentment shall be

1 entered in the court's record, noting briefly the style of the
2 criminal action, the file number of the indictment, and the
3 defendant's name.

4 (b) If the defendant is not in custody or under bond at the
5 time the indictment is presented, the indictment may not be made
6 public and the entry in the court's record relating to the
7 indictment must be delayed until the capias is served and the
8 defendant is placed in custody or under bond. (Code Crim. Proc.,
9 Art. 20.22.)

10 Source Law

11 Art. 20.22. PRESENTMENT ENTERED OF RECORD.
12 (a) The fact of a presentment of indictment by a grand
13 jury shall be entered in the record of the court, if
14 the defendant is in custody or under bond, noting
15 briefly the style of the criminal action, the file
16 number of the indictment, and the defendant's name.

17 (b) If the defendant is not in custody or under
18 bond at the time of the presentment of indictment, the
19 indictment may not be made public and the entry in the
20 record of the court relating to the indictment must be
21 delayed until the capias is served and the defendant is
22 placed in custody or under bond.